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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re R.J., a Person Coming Under the
Juvenile Court Law.

B263756
(Los Angeles County
Super. Ct. No. CK80459)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

JONATHAN B.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court of Los Angeles County.
Julie Blackshaw, Judge. Affirmed.

Linda Rehm, under appointment by the Court of Appeal, for Defendant and
Appellant.

Mary C. Wickham, Interim County Counsel, Dawyn R. Harrison, Assistant
County Counsel, William D. Thetford, Deputy County Counsel, for Plaintiff and
Respondent.

Jonathan B. (Father) challenges a dependency court order finding his biological daughter, R.J., adoptable and terminating Father's parental rights. Finding no error, we affirm.

BACKGROUND

The Department of Children and Family Services (DCFS) first received a referral pertaining to R.J. in June 2009, two days after she was born. The referral stated that C.J. (Mother) was homeless and entered the hospital in a disheveled state, smelling badly. Mother's parental rights to an earlier-born child had been terminated, and Mother stated that she was living on the streets and was unable to care for R.J. Father had a history of bipolar disorder and attention deficit hyperactivity disorder, and had stopped using medication for his psychological issues, though he wanted to resume medication. Father said that he tried to prepare for R.J.'s birth, but was unable to do so because he was homeless and did not have identification.

R.J. was removed from parental custody and placed in the foster home of Josh K. and E.K. DCFS filed a dependency petition. The dependency court ordered no family reunification services for Mother because she failed to reunify with her older child. Father received reunification services and reunified with R.J. in April 2011. The dependency court terminated court jurisdiction in May 2012.

In October 2012, DCFS received a referral that Father's infant son, Eric W., was taken to the hospital by Father and Eric's mother, Rebecca W., for a closed head injury. Father and Rebecca reported that R.J. had a temper tantrum and flipped Eric out of his car seat. Medical staff believed that Father and Rebecca's explanation of the injury did not make sense.

Father had full custody of R.J. He said he was living with Rebecca, R.J., Eric, and Emily, the daughter of Father and Rebecca, who was approximately a year and a half younger than R.J. They lived in a bedroom in a home also occupied by Rebecca's grandmother and mother. R.J. was attending a development center on weekdays. She was taken to and from the center by Rebecca's cousin, Lisa.

In February 2013, E.K. (R.J.'s previous foster mother) and Father showed up at the DCFS office without an appointment. Father told the social worker that he had not been living with Rebecca since June 2012. Rebecca's family had accused him of breaking into the family home and stealing items. Father reported that he was not allowed to see his children, including R.J. He wanted to terminate his parental rights to R.J. so she could live with her former foster parents, E.K. and Josh.

The social worker interviewed Rebecca. Rebecca stated that Father was not allowed on the property and was no longer her boyfriend. Father had sent Rebecca numerous text messages stating that he planned to kill himself.

A team decision meeting was held on February 20, 2013, involving Rebecca, Father, Lisa (Rebecca's cousin), E.K., Josh, and various social workers and therapists. Rebecca reported being overwhelmed with the special needs and responsibilities of Eric, and expressed inability to care for R.J. Lisa had been caring for R.J., including taking R.J. to and from school and having R.J. sleep at her home. It was decided that DCFS would seek a warrant to remove R.J. from Father's custody and place her in an appropriate setting. Josh and E.K. were considered suitable, given that R.J. lived with them from just after birth until she was almost two years old.

R.J. was removed from Father on February 22, 2013, and placed with E.K. and Josh. DCFS filed a section 300 petition on February 27, 2013.¹ R.J. was ordered detained.

A dependency investigator spoke with E.K. in March 2013. E.K. stated that she and Josh had remained involved in R.J.'s life, even after R.J. was returned to the care of Father. E.K. further reported that Father had stolen their credit cards and had previously asked her how much she would be willing to pay to keep R.J.

¹ Unless otherwise noted, all statutory references are to the Welfare and Institutions Code.

The investigator also spoke with Lisa. Lisa said that, since the time Father reunified with R.J. in 2011, R.J. lived with her on weekdays. Lisa, however, made sure R.J. saw her family every day.

Father pled no contest to the section 300 petition. The dependency court sustained one count alleging that Father had a history of mental and emotional problems, including posttraumatic stress disorder (PTSD) and suicidal ideation, that rendered him unable to provide regular care for and supervision of R.J. The court declared R.J. a dependent, denied reunification services to Mother, and ordered DCFS to provide monitored visits and reunification services to Father, including individual mental health counseling.

In July 2013, Father complained that he was not being permitted to visit R.J. DCFS responded that Father missed numerous visits and did not call to confirm visits. Sibling visits were not occurring because DCFS wanted to first ensure that Father's visits with R.J. were stable.

In March 2014, R.J. was in good health and had progressed emotionally. Father had not visited with her since June 2013. The foster parents stated that, prior to the time he stopped visiting, they allowed Father to visit R.J. in their home, and he stole an iPad, an iPod, an expensive camera, and their credit card, making charges of over \$20,000.

In May 2014, DCFS reported that it established a plan for Father's visits that appeared to be working. R.J. met with Father twice a week, and also visited with her two half siblings, Emily and Eric, during her visits with Father. Father was mostly appropriate during visits. He came with snacks, completed diaper changes and bathroom breaks, cleaned up the room, and showed affection to the children. As for R.J.'s interaction with her siblings, she and Emily would squeal with excitement when they first saw each other. They generally played well together, but a social worker observed that there did not appear to be a close bond between R.J. and her Father or siblings. R.J.'s foster mother, E.K., said that R.J. did not talk about Father or her siblings outside of the visits, and did not appear upset at the end of visits.

In August 2014, the dependency court terminated Father's reunification services and set a section 366.26 hearing.

In December 2014, DCFS reported that Father had not visited regularly since August 2014. One visit he did make, in September 2014, did not go well. According to R.J.'s therapist, the visit triggered symptoms of PTSD in R.J., and caused her to experience uncontrollable bowels, high anxiety, hyperactivity, tantrums, and separation anxiety, among other symptoms. In a concurrent report, the DCFS social worker noted that the only stable home R.J. had in her short life was that of E.K. and Josh, who wished to adopt her.

A contested section 366.26 hearing was held in March 2015. Father's counsel called Rebecca, who testified that R.J. was 18 months old when she came to live with them and was almost four years old when detained. According to Rebecca, R.J. and Emily were "very connected." Emily was two years old and Eric was one and a half when R.J. was most recently removed. During her time with the family, R.J. saw Emily and Eric every day. The children played together and Emily would be happy when R.J. came home from school. R.J. would spend nights at Lisa's home because Eric had special needs. After R.J. was removed, she continued to visit with her half siblings, visiting three times a week at first. Thereafter, the children did not see each other for six months, but, beginning in March 2014, they visited at least once a week. Rebecca observed two sibling visits and felt that R.J. and Emily played very closely, and Eric would sometimes join in as well. R.J. was happy to see her siblings. When R.J. saw Emily she would say her name and hug her. Emily would get upset and sometimes cry when R.J. had to leave. Rebecca also observed R.J.'s interactions with Father and believed that they had a very close connection.

Father's counsel then called R.J. to testify but was unable to qualify her. R.J. was allowed to testify anyway. She said that she lived with "mommy," "papi," and "Primo," another child in her foster home. R.J. named the children in her foster home when asked if she had brothers or sisters. When asked if she knew Emily and Eric, R.J. said Emily was her "old" sister and Eric her "older" brother. R.J. nodded "yes" when asked if she liked to see Father. She said that she did not like to play with Emily and Eric.

Father also testified. He said that R.J. lived with him for two years and he was her primary caregiver. According to Father, he was responsible for everything associated with R.J., including feeding her, clothing her, and taking her out. He saw her “pretty often” after she was removed from his care. During visits, they read, played, cuddled, watched movies, counted, and colored. When their visits ended, R.J. cried every time and said she did not want to go. R.J. had told him she wanted to live with him. Father said that when R.J. saw Eric and Emily she would hug and kiss them. Before R.J. was detained, she lived with Emily and Eric as a family, would attend events with them, and would eat with them. Father testified that R.J.’s bond with her half siblings was close when E.K. was not around. Father acknowledged that, after R.J. was returned to his custody, she lived with Lisa for a time, but said that the arrangement only lasted about two months.

R.J.’s attorney called E.K. She testified that she was absolutely willing to adopt R.J. She also stated that she was open to allowing R.J. to have continued contact with Father, Eric, and Emily.

The dependency court found that R.J. was likely to be adopted if parental rights were terminated. It determined that Father did not meet his burden of proving the applicability of an exception to termination of parental rights. As for the potential of a sibling relationship exception, the court noted that Eric and Emily were very young during the time that R.J. lived with them, and that R.J. spent a lot of this time in Lisa’s home. The court found no shared experiences that resulted in a close or strong bond, and that the benefit of maintaining a sibling relationship did not outweigh the detriment R.J. would experience if she were not adopted. Accordingly, the court terminated parental rights.²

² The Motion to Correct Record, filed by DCFS on July 23, 2015, attaching a copy of the dependency court’s March 4, 2015 order, is granted.

DISCUSSION

Father contends that the dependency court erred by declining to apply the sibling relationship exception to termination of parental rights. When the dependency court determines that a child is likely to be adopted, the court will generally terminate parental rights and order the child placed for adoption. (§ 366.26, subd. (c).) The court will not terminate parental rights, however, if it “finds a compelling reason for determining that termination would be detrimental to the child” because “[t]here would be substantial interference with a child’s sibling relationship, taking into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) It is the parent’s burden to prove in the dependency court that such an exception applies. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 949 (*L.Y.L.*).

In determining the applicability of the sibling relationship exception, “[t]he court must balance the beneficial interest of the child in maintaining the sibling relationship, which might leave the child in a tenuous guardianship or foster home placement, against the sense of security and belonging adoption and a new home would confer.” (*L.Y.L.*, *supra*, 101 Cal.App.4th 942, 951.) “To show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child. Many siblings have a relationship with each other, but would not suffer detriment if that relationship ended. If the relationship is not sufficiently significant to cause detriment on termination, there is no substantial interference with that relationship.” (*Id.* at p. 952, fn. omitted.) The dependency court considers the factors outlined in section 366.26, subdivision (c)(1)(B)(v), in determining whether the child has a sufficiently significant sibling relationship. (See *L.Y.L.*, *supra*, 101 Cal.App.4th at pp. 951-952.)

In determining whether the dependency court properly declined to apply the sibling relationship exception, we review for substantial evidence the finding that the sibling relationship was not sufficiently significant to deny termination. (*In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) Under this standard, “[u]nless the undisputed facts established the existence of a beneficial . . . sibling relationship,” the challenge to the dependency court’s determination fails. (*Ibid.*) We also examine the trial court’s finding that the existence of the sibling relationship did not constitute a “compelling reason” to determine that termination would be detrimental. The abuse of discretion standard applies to our review of this finding. (*Id.* at p. 1315.)

Substantial evidence supported the dependency court’s determination that R.J.’s relationship with Emily and Eric was not sufficiently significant to apply the sibling relationship exception. R.J. spent only a small portion of her life in the presence of her half siblings. From soon after she was born until she was 20 months old, R.J. lived with E.K. and Josh. When she was returned to Father’s custody, Emily was still an infant and Eric was not yet born. R.J. was then raised in large part by Lisa. Although Lisa allowed R.J. to see Emily and Eric nearly every day, it appears that R.J. usually did not live in the same home as her half siblings. R.J. was returned again to the care of E.K. in February 2013. Thus, R.J. has spent a great deal more time living with her prospective adoptive parents than she has with Emily and Eric.

It does appear that R.J. and Emily had a somewhat close relationship. They would squeal with excitement when seeing each other and enjoyed playing together. But R.J. did not generally become upset when visits with her half siblings ended, and she did not talk about Emily and Eric outside of the visits. The trial court, therefore, did not err in finding that R.J. did not share a strong bond or significant common experiences with her half siblings.

Furthermore, any benefit from maintaining the relationship must be measured against the security R.J. would gain from adoption. (*L.Y.L., supra*, 101 Cal.App.4th 942, 951.) R.J. has lived the majority of her life with her prospective adoptive parents and has

thrived in their care. The sort of significant sibling relationship necessary to outweigh the benefits of adoption did not exist in this case.

In arguing that the trial court erred by finding that the sibling relationship exception did not apply, Father primarily relies on *In re Naomi P.* (2005) 132 Cal.App.4th 808.). In that case, the dependency court found that the sibling relationship exception applied, and DCFS appealed. In contrast to the sibling relationship in this matter, siblings were a “constant thread” in the life of the dependent child in *Naomi P.* (*Id.* at p. 824.) What matters more to our analysis, though, is the differing appellate posture of *Naomi P.* In declining to overturn the dependency court’s determination that the sibling relationship exception applied, the appellate court in *Naomi P.* noted, “It is not our role to interfere with the trial court’s assessment of the witnesses’ demeanor and credibility.” (*Ibid.*) In this matter, after hearing testimony, the dependency court declined to apply the sibling relationship exception. In arguing that we should reverse the trial court’s determination, Father essentially urges us to second-guess the court’s assessment of witnesses’ credibility, a function we cannot perform.

Father fails to show that undisputed facts proved the existence of a beneficial sibling relationship. He also does not demonstrate that the dependency court abused its discretion in not finding a compelling reason to decline terminating parental rights. Reversal, therefore, is not warranted.

DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

CHAVEZ, J.

HOFFSTADT, J.